



## **Conservation Services Group**

### **STATE OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

#### **D.T.E. 03-62 Notice of Inquiry**

Inquiry by the Department of Telecommunications and Energy, on its own motion, pursuant to G.L. c164, section 1F to investigate the use of the New England Generation Information System.

#### **COMMENTS OF CONSERVATION SERVICES GROUP:**

##### **I. Executive Summary**

CSG strongly supports the Massachusetts Department of Telecommunications and Energy's (Department's) proposed guidance for use of the New England Generation Information System as the primary data source for verifying the accuracy of the information presented to electricity customers under G.L. c164, section 1F.

In developing the proposed guidance, the Department will be taking full advantage of more than three years of extensive work that has gone into the development and implementation of the comprehensive New England Generation Information System (NE-GIS). A Caucus of New England Regulators, with participation of Massachusetts representatives from the Department, the Division of Energy Resources (DOER), the Department of Environmental Protection (DEP), the Office of the Attorney General (AG), worked diligently with the members of NEPOOL to ensure that the NE-GIS will provide detailed tracking and accounting for the distribution of the non-electric (social, economic and environmental) attributes of generation among all electric retail suppliers (suppliers) to customers in New England. The intense cooperative upfront effort is now paying off.

The NE-GIS, which is administered by APX under contract to NEPOOL, has been in full operation since July of 2002. The web based NE-GIS is simple for both generators, suppliers and provides reports to both the public and state regulators. As of July 1, 2003, NE-GIS will provide third party independent verification of data on the attributes of generation held by all Suppliers for calendar year 2002. This verification method will dramatically improve transparency and accuracy of compliance data while allowing each state to set the public policy objectives that best meet their unique needs. The Department's proposed guidance is an opportunity for Massachusetts to further capitalize on NE-GIS to achieve a specific public policy objective at minimal cost to Generators, Suppliers and consumers.

## **II. Comments on proposals posed in the NOI**

***“The Department proposes to require that competitive suppliers be required to use NE-GIS data as the sole basis for the fuel, emissions and labor information included on their disclosure label”***

While strongly supporting the Department’s proposal, CSG offers the following comments:

- ?? The requirement should apply to all suppliers of electricity to retail customers, including distribution companies supplying default and standard offer services.
- ?? While the NE-GIS provides information regarding all attribute data used in preparation of the disclosure labels, it does not provide information of the volume of sales for each retail electric supplier. The verification of the volume of sales is also critical to provide an accurate disclosure label. Therefore, CSG urges the Department to require that data on the volume of retail electricity sales by product be verified using the Electronic Business Transaction (EBT) data already maintained by Massachusetts distribution companies. (see section on Product and Product Sales below).
- ?? At the technical session it was noted that the NE-GIS currently does not publish a report of the New England Average resource mix or the percentage of New England generation derived from units operated by unionized labor. APX has agreed to provide such reports at no cost if NEPOOL rules allow. CSG, as a NEPOOL member and a member of the NE-GIS NEPOOL working group is committed to work with APX to assure that the needed information is available to suppliers in time to meet the timeline set out by the Department.
- ?? At the technical session, a question was raised regarding how early compliance and banked compliance provisions of the DOER RPS regulations should be reflected on the label. CSG strongly supports the position presented by National Grid at the technical session that compliance with RPS is a distinct separate regulatory requirement. When reporting attributes of electricity delivered in any particular quarter, the Department should require that suppliers use the data that appears on their NE-GIS reports for that quarter, since that provides an accurate portrayal of the social, environmental and economic implications of generating the electricity that they used during a particular period. The only exemption to this requirement that CSG supports would be narrowly limited to 100% renewable products that rely exclusively on wind, hydro and solar. (see below)

***“ The Department proposes that each supplier be required to update its information disclosure label during October 2003 to include information from the GIS report for the first quarter of 2003. Thereafter, each supplier would update its label quarterly to include information from its most-recently available NE-GIS report, with such updates occurring during the month following the availability of the report.***

CSG strongly supports the proposed schedule.

- ?? As a supplier of a premium (Green) product, CSG believes that the proposed schedule provides ample time to transition.

- ?? At the technical session, a proposal was made to delay the requirement until January 2004 to include information from the GIS report for the second quarter of 2003 because of procedural time constraints.
- ?? While supporting the need for the Department to meet its procedural obligations, CSG urges the Department to make every effort to have the labels for the full calendar year of 2003 verified based on the NE-GIS. CSG argues that the notice given by the NOI and the technical session is sufficient for suppliers to adequately prepare, provided the final guidance is issued no later than the middle of the trading period for the first quarter of 2003 or August 15, 2003.
- ?? If the Department is unable to mandate use of NE-GIS data for verification of the information presented on the labels issued in October 2003, CSG urges the Department to encourage voluntary use of the NE-GIS to the maximum extent feasible.

***“...The initial labels updated pursuant to the Department’s proposal in this investigation would be based on less than twelve months of data. The Department seeks comment on whether a short-term exception from our regulations would be appropriate for purposes of a smooth and timely transition to the use of NE-GIS data”.***

CSG strongly supports the proposed transition schedule.

- ?? Requiring simultaneous use of the NE-GIS and old contract path accounting methodologies during a transition year would not only place an undue burden on suppliers but would result in significant inaccuracies.
- ?? The proposed transition schedule allows the vast majority of suppliers, who are selling electricity that is undifferentiated by attributes, to quickly take full advantage of their investments in the NE-GIS system to streamline reporting. Any theoretical loss of consumer information during the transition will be more than offset by the benefits consumers will gain when the system is fully in place.

***“The Department proposes that suppliers offer multiple products to Massachusetts customers and establish a separate NE-GIS sub-account for each of its products, in order to simplify the Departments review in the annual reports.”***

CSG strongly supports the Department’s requiring the use of the sub-account mechanism to verify the content of attribute-differentiated products.

- ?? NE-GIS was specifically designed to provide this feature to support verification of compliance by attribute-differentiated products.
- ?? Use of sub-accounts as proposed by the Department will provide maximum transparency and protect consumers.

***“ In light of the fact that suppliers in Massachusetts are also required to submit annual reports to the state’s DOER, in order to comply with the state’s Renewable Portfolio Standards, the Department seeks comments on ways in which suppliers can satisfy our and DOER’s reporting requirements efficiently ”***

CSG commends the Department for its coordination with both DOER and DEP. This multi-agency effort will not only reduce supplier’s compliance costs but will also maintain rigorous standards for data quality and verification.

- ?? CSG urges the Department to adopt in its guidance the definition of Retail Electricity Product used by the DOER in 225 CMR 14.02. It is crucial both to reduce the regulatory

burden on suppliers and to eliminate confusion for customers that both agencies use the same definition of product.

- ?? Further, the Department can greatly improve the quality of labels and reduce the work for suppliers by providing clear guidance on how to aggregate the almost 50 categories and sub-categories of resource types on the NE-GIS certificates into approximately one dozen categories presented on the Departments required disclosure label. In preparing this guidance, it is crucial that all NE-GIS categories be included in the aggregation for one and only one of the label categories.

### **III. Comments on additional issues raised in the technical session**

#### ***How should information from residual mix and unit specific certificate, from generation outside of New England, be reported on the Department's Label?***

While the simple response to this question is that the disaggregated information should be used to calculate the values presented on the label, the real answer is more complex.

The implementation of the NE-GIS system makes a number concept embodied in the Departments disclosure rule regulations obsolete. The concept of known and unknown resources that came from the contract path verification methodology is no longer needed. Under the NE-GIS a supplier is in full control of the generation attributes it is required to disclose. A supplier of an undifferentiated product will likely choose to purchase only sufficient renewable resources to comply with RPS and to accept residual certificates for its remaining load obligation. However, such a choice is a business decision. Another supplier of an undifferentiated product may choose to include NE-GIS certificates as well as energy in bi-lateral contracts with some or all generators. That would be a different business decision. The purpose of DTE's labeling requirement is to have suppliers take full responsibility for and disclose to their customers these business decisions.

Since, 11.06: (2)(e) simply states

Format of the Information Disclosure Label. Information disclosure labels shall be presented in formats as determined by the department."

CSG urges the Department, as part of this guidance, to provide a new label format that has only one column for resource mix, this one simplification would both simplify compliance, we would argue and greatly improve the usefulness of the label to consumers.

In a similar manner the adoption of the NE-GIS makes the concept of undifferentiated imports obsolete. Now all imports, whether system imports from a neighboring control area or unit specific imports from a renewable generation unit located outside of New England, are assigned NE-GIS certificates that provide a breakdown of resource mix by fuel type. Given the availability of this information, including, imports as a fuel source as specified in 11:06. (2) (d) (4) (b) is not appropriate. CSG urges the Department to use its authority under 11:08 Exemptions, as part of this guidance, to remove imports as a fuel source on the label.

***Special considerations for premium products during the transition year or the first year that a product is offered.***

Since most suppliers intending to offer premium attribute-differentiated products plan to meet or exceed the premium content claim on an average annual basis, participants at the technical conference expressed concern that the Department guidance requiring the used verification of disclosure label during the transition year or the first year that a product is offered to be based on 1, 2 & 3 quarters of information until a full four quarters of data is available. A proposal made at the technical session would allow an exemption to suppliers offering a premium product for the transition period [and the first four quarters a product is offered]. While potentially addressing a legitimate communications concerns, any proposal that has consumers receiving DTE approved labels based on prospective data, poses the risk that the supplier will not deliver. Even one such incident could tarnish the whole green power movement and set back public acceptance of renewable energy by many years. Because allowing the use of prospective data presents such a significant risk to the whole industry, CSG urges DTE to do so only after careful deliberation and with strict limitations. In Attachment A, CSG provides proposed draft guidance to start the discussion on what would be appropriate protocols, should DTE consider such an exemption.

Given the complexity of implementing and monitoring such an exemption CSG is committed to working with the NEPOOL GIS working group to develop a comprehensive solution.

***Special considerations for 100% renewable products that rely exclusively intermittent resources, specifically wind and/or solar.***

At least two suppliers who intend to offer premium attribute-differentiated products that both are 100% renewable and rely exclusively intermittent resources, specifically wind and/or solar. While the exemption for the transition year/first year of offer, will be an important tool for these prospective green suppliers, the design of the NE-GIS that limits the certificates can be settled into any sub-account can not exceed the load obligation in that account in any quarter. This design requirement limits these suppliers ability to “bank” attributes from these intermittent sources during favorable quarters and apply those attributes to quarters where generation is low.

There are several ways to view the implications of this design element in NE-GIS. One way is to say that owners of such generation, who should be able to charge a higher premium for their certificates during times of scarcity, benefit from the rule as written. Another way to look at the rule is that the price uncertainty and the generation variability creates/presents such a difficult business challenge to both generators and suppliers, it becomes unmanageable to provide 100% renewable products that rely exclusively intermittent resources, specifically wind and/or solar. Based on the information presented at the technical session, CSG believes that the latter is more likely to be the case.

Based on information presented at the technical conference CSG believes that a limited use of the Reserve Certificate mechanism in the NE-GIS, may provide a mechanism to address this unique situation. While potentially addressing a legitimate communications concerns, any proposal that has consumers receiving DTE approved labels based on reserve certificates, poses

the risk of double selling. Even one such incident could tarnish the whole green power movement and set back public acceptance of renewable energy by many years. Because allowing the use of prospective data presents such a significant risk to the whole industry, CSG urges DTE to do so only after careful deliberation and with strict limitations. In Attachment B, CSG provides proposed draft guidance to start the discussion on what would be appropriate protocols, should DTE consider such an exemption. A key element in this proposal is the use of a third party as an Escrow Agent that will guarantee Reserve Certificates used to support label claims have not been nor will be sold for other purposes.

Given the complexity of implementing and monitoring such an exemption CSG is committed to working with the NEPOOL GIS working group to develop a comprehensive solution.

***Availability of EBT data to verify the volume of product sales.***

At the technical session DOER and others pointed out one limitation of the NE-GIS system. While it has the sub-account provision that enables suppliers to allocate load obligation among multiple products, the NE-GIS provides no verification that the suppliers allocation of load matches the actual distribution of retail sales among its products. There was extensive discussion among the parties at the technical session regarding the ability of the EBT, currently being implemented by all distribution companies in Massachusetts, could easily be used to document the respective quantities of sales, by product, for suppliers offering more than one product. While all representatives of the distribution companies present, indicated that such a track would likely be feasible, also expressed very legitimate concerns that a proliferation of attribute-differentiated products could result in an unmanageable workload.

As a party that has offered an attributes only differentiated product for a number of years, with a partner that has just launched an attributes-differentiated, delivered product for large C&I customers and who plans to participate as a supplier under the National Grid GreenUp program, CSG urges the Department to work with the distribution companies to have EBT provide this service for no more than five to ten products per supplier. This limited number should be more than sufficient for the foreseeable future. Hopefully such a limitation will address the distribution companies concerns. By directing all parties to implement this enhancement to the EBT system expeditiously, the Department put in place the final piece which when used in combination with the NE-GIS will enable suppliers in Massachusetts to document their compliance with verification of the information presented on the Disclosure Label easily and completely. In addition the same date will also support compliance with the DOERs RPS regulations, forthcoming DEP GRS regulations will provide solid documentation to defend marketing claims.

## **Attachment A**

### **Draft proposed guidance**

#### **Exemption to use a “Product Prospective Annual Disclosure Label”**

A supplier requesting an exemption to provide consumers with a “Prospective Annual Disclosure Label” for a specific product should file a request with the Department pursuant to 11:08 at least \_\_\_\_ days prior to the product being offered to Customers in Massachusetts. The following guidance is an attempt to balance the two important goals of providing flexibility, so that prospective suppliers can reasonably meet consumer demands for premium green products and meeting the Department’s responsibility to assure both the timeliness and veracity of the government mandated labels.

- 1) The supplier must submit a request for an exemption to use a “Prospective Annual Disclosure Label” for a specific product (Request) to the Department as envisioned in 11:08 before the product is offered to customers in Massachusetts
  - a) Eligibility
    - i) Suppliers planning to offer green premium products
  - b) Content of Request
  - c) A general description of the product
  - d) The four NE-GIS quarters for which the exemption is requested
  - e) Rational for requesting the exemption to 11.06 (2)(d) (1)(b), including both consumer and system benefits
  - f) The suppliers plan for the resource mix during the first four NE-GIS quarters of retail sales.
  - g) A sample of the proposed label that is clearly marked

**“This Disclosure Label is based on (the supplier’s)  
PROJECTIONS OF THE ANNUAL AVERAGE CONTENT  
OF THIS PRODUCT.**

**Disclosure Labels for this product will be based on verifiable  
historical data starting in (month) of (year)**

- h) Interim reporting
  - i) After the first NE-GIS quarter verifying the content of the Product for which an exemption has been granted, the supplier will submit to DTE a comparison of the planned vs. actual resource mix for the product.
  - ii) If the actual deviates significantly from actual, the supplier will submit a revised resource acquisition plan for the remaining three NE-GIS quarters for which an exemption has been granted.

- 2) Exemption Expiration
  - a) No exemption will be granted for any product for more than Four NE-GIS quarters. After this initial period, the supplier exemption will expire and the supplier will be subject to all of the data verification requirements.
- 3) Exemption Termination
  - a) If, based on the interim reporting, the DTE determines that the supplier will not be able to meet the projected resource mix presented in the request, the DTE may terminate the exemption and require the supplier to immediately provide consumers with Disclosure Labels that comply with 11.06 (2)(d) (1)(b).



## **Attachment B**

### **Draft proposed guidance**

#### **Exemption to use Reserve Certificates to verify a portion of the content of a 100% renewable Product that relies exclusively intermittent resources, specifically wind and solar**

A supplier requesting an exemption to use Reserve Certificates to verify a portion of the content of a 100% Renewable Product that relies exclusively on intermittent resources, specifically wind and solar (100% Product), should file a request with the Department pursuant to 11:08 at least \_\_\_\_\_ days prior to the product being offered to Customers in Massachusetts and thereafter, each year by October 15. The following guidance is an attempt to balance the two important goals of providing flexibility so that prospective suppliers can reasonably meet consumer demands for premium green products and meeting the Department's responsibility to assure both the timeliness and veracity of the government mandated labels.

- 1) The supplier must submit a request for an Exemption to use Reserve Certificates to verify a portion of the content of a 100% renewable Product that relies exclusively intermittent resources, specifically wind and solar (Request) to the Department as envisioned in 11:08 before the product is offered to customers in Massachusetts.
  - a) Eligibility
    - i) Suppliers planning to offer a 100% green premium products.
    - ii) The product relies exclusively on intermittent resources specifically wind and solar.
  - b) Content of Request
    - i) A general description of the product.
    - ii) The calendar year for which the exemption is requested.
    - iii) Rational for requesting the exemption to 11.06 (2)(d) (1)(b), including both consumer and system benefits.
    - iv) A letter from a credible, independent third party, such as the Massachusetts Renewable Energy Trust or GreenE that agrees to serve in the role of Reserve Certificates Escrow Agent (Agent).
    - v) A Intermittent Renewable Resources acquisition plan for the applicable calendar year including:
      - (1) A projection of product sales by quarter and the resulting projected annual requirement for intermittent resources certificates.
      - (2) The projected % of certificates to be settled in the suppliers sub-account for each quarter of the calendar year, that meets the minimum requirement, that 80% of the certificates used to verify the accuracy of the disclosure label will be settled in the suppliers sub account. Based on these projections, the supplier will identify anticipated shortfalls (quantity and quarter) in settled wind or solar certificates for the year.
      - (3) The quantity and quarter of proposed deposits of wind and/or solar certificates representing generation from any reporting year to the NE-GIS Reserve Certificates Account during the year. All such deposits shall indicate transfer of

the Reserve Certificates to the Agent. The acquisition plan must include an adequate contingency based on the historical performance of similar resources and in no case will be less than 10% of the total projected load for the product for the year.

- (4) A sample of the proposed label that is clearly marked.

**“This Disclosure Label is based on (the supplier’s) PROJECTIONS of the annual average content of this product.**

**Disclosure Labels for this product will be based on verifiable historical data starting in (month) or (year)”**

- c) Using Reserve Certificates to verify Disclosure Label.

- i) Beginning when the supplier has four quarters of NE-GIS data for a 100% Product, and every quarter thereafter, Disclosure Labels will be based on the preceding four quarters of NE-GIS certificates settled in the suppliers sub-account for the product. The supplier will be permitted to substitute one Reserve Certificate held by the Agent for one residual mix certificate assigned to a 100% Product’s sub-account in a particular quarter, up to the full load obligation in that sub account. All such substitutions are permanent. The Agent must verify that the specific Reserve Certificates used by a supplier to verify a Disclosure label identified by its NE-GIS identification code has not been used for any other purpose and will not be used for any other purpose.

- d) Interim reporting.

- i) After the first NE-GIS quarter verifying the content of the Product for which an exemption has been granted, the supplier will submit to DTE a comparison of the planned vs. actual resource mix for the product.
- ii) If the actual deviates significantly from actual, the supplier will submit a revised resource acquisition plan for the remaining three NE-GIS quarters for which an exemption has been granted.

- e) Exemption Expiration.

- i) No exemption will be granted for any product for more than Four NE-GIS quarters. After this initial period, the supplier exemption will expire and the supplier will be subject to all of the data verification requirements.

- f) Exemption Termination.

If, based on the interim reporting, the DTE determines that the supplier will not be able to meet the projected resource mix presented in the request, the DTE may terminate the exemption and require the supplier to immediately provide consumers with Disclosure Labels that comply with 11.06 (2)(d) (1)(b).